

Indiana Department of State Revenue

Ruling # 2000-01 FIT

March 31, 2000

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date is superseded or deleted by publication of a new document in the Indiana Register. The publication of a new document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

Financial Institutions Tax – Attribution of Receipts

Authority: IC 6-5.5-1-2, IC 6-5.5-1-10, IC 6-5.5-2-3, IC 6-5.5-2-4, IC 6-5.5-4-2, IC 6-5.5-4 (Sections 3 through 13).

The taxpayer requests the Department rule on the inclusion of non-municipal investment receipts in the apportionment factor for Indiana Financial Institution Tax purposes.

STATEMENT OF FACTS

The taxpayer is a bank holding company domiciled outside of Indiana. The taxpayer's principal bank subsidiary (hereinafter BANK) is also a nonresident taxpayer but has operations in Indiana. The taxpayer, BANK, and all other subsidiaries file a combined Indiana Financial Institution Tax Return under the unitary concept. BANK is in the business of accepting deposits and investing those deposits in commercial loans, residential loans, municipal investments (hereinafter "municipals"), and non-municipal investments, (hereinafter "non-municipals"), such as U.S. Treasuries, Federal Agencies (e.g. GNMA, FNMA, Freddie Mac, other loan-backed securities, etc.) and corporate securities. BANK currently manages the vast majority of its municipals and non-municipals within Indiana. Furthermore, BANK is considering whether to become an Indiana resident.

TAXPAYER QUESTIONS

1. Are the receipts from investments in non-municipals "attributable to Indiana" and included in the numerator of the apportionment factor by virtue of the fact that BANK is either commercially domiciled in Indiana or the investment management takes place in Indiana?
2. Are the receipts from investments in non-municipals included in the denominator of the apportionment factor?

DISCUSSION

Per IC 6-5.5-2-1, The Indiana Financial Institutions Tax is a franchise tax measured by the apportioned income of both resident and nonresident taxpayers. Per IC 6-2.5-2-3, for a taxpayer that is not filing a combined return, the taxpayer's apportioned income consists of the taxpayer's adjusted gross income for that year multiplied by the quotient of:

- (1) the taxpayer's total receipts attributable to transacting business in Indiana, as determined under IC 6-5.5-4; divided by
- (2) the taxpayer's total receipts from transacting business in all taxing jurisdictions, as determined under IC 6-5.5-4.

Per IC 6-5.5-2-4, for a taxpayer filing a combined return on behalf of a unitary group, the unitary groups apportioned income consists of:

- (1) the aggregate adjusted gross income, from whatever source derived, of the members of the unitary group; multiplied by
- (2) the quotient of:
 - (A) all the receipts of the taxpayer members of the unitary group that are attributable to transacting business in Indiana; divided by
 - (B) the receipts of all the members of the unitary group from transacting business in all taxing jurisdictions.

During the 1999 Session, House Enrolled Act 1003 was passed by the General Assembly and signed by the Governor of the State of Indiana. This Act amended the Financial Institutions Tax to allow apportionment of Indiana income of resident financial institutions (retroactive to January 1, 1999). Prior to the Act, all of the income of a resident taxpayer, from whatever source derived, was included in the numerator of the unitary group's apportionment factor when determining the income of the combined group. A resident taxpayer or a resident member of a unitary group is now taxed based on their apportioned income to Indiana.

Denominator of the Apportionment Factor

A definition of receipts is contained in Indiana Code 6-5.5-4-2 that provides in part:

Sec. 2. For purposes of computing receipts or the receipts factor under this article the following apply:

- (1) "Receipts" means gross income (as defined in IC 6-5.5-1-10), plus the gross income excluded under Section 103 of the Internal Revenue Code, less gross income derived from sources outside the United States. However, upon the disposition of assets such as securities and money market transactions, when derived from transactions and activities in the regular course of the taxpayer's trade or business, receipts are limited to the gain (as defined in Section 1001 of the Internal Revenue Code) that is recognized upon the disposition.

Per IC 6-5.5-1-10, "Gross income" means gross income (as defined in Section 61 of the Internal Revenue Code) for federal income tax purposes. Thus the denominator for the receipts factor is to include any gross income reported for federal income tax purposes.

Numerator of the Apportionment Factor

The attribution rules of Sections 3 through 13 of Indiana Code 6-5.5-4 determine the composite receipts that are included in the numerator of the apportionment factor. Receipts from Indiana municipal investments are specifically attributable under IC 6-5.5-4-12, however there is no attribution rule defining how receipts from non-municipal investments are to be included in the numerator of the apportionment factor.

RULING

1. Receipts included in the numerator of the apportionment factor are limited to those specifically enumerated in IC 6-5.5-4-3 through IC 6-5.5-4-13. Receipts from non-municipal investments are not specifically enumerated and therefore not included in the numerator of the apportionment factor. The location of the taxpayer's commercial domicile or the fact that the management of non-municipal investments takes place in Indiana would not change this ruling.
2. The denominator of the apportionment factor is to include any gross income reported for federal income tax purposes under Section 61 of the Internal Revenue Code. Receipts from non-municipal investment income must be included in the denominator of the apportionment factor to the extent they have been included as gross income for federal income tax purposes. Any non-municipal investment receipts which are for the disposition of assets such as securities and money market transactions are limited to the gain that is recognized upon the disposition in accordance with IC 6-5.5-4-2(1).

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in a statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

DEPARTMENT OF STATE REVENUE